



# Fired Worker Not Entitled to Jury Trial for Disability Retaliation Claim: Key Takeaways for Employers

Insights

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A high-level IT worker who claimed he was discriminated against because of his medical condition was not entitled to a jury trial or monetary damages for his retaliation claim under the Americans with Disabilities Act (ADA). The 4th U.S. Circuit Court of Appeals said the trial judge in this case properly conducted a bench trial – which is decided by a judge – rather than sending it to a jury to decide. The decision aligns with other federal appellate courts – the 7th and 9th Circuits – which have also ruled on this issue. Although the 4th Circuit and the trial court sided with the employer on the worker’s disability discrimination and retaliation claims, the case still serves as a reminder to review your practices for compliance with the ADA, to develop consistent procedures for handling employee complaints, and to take proactive steps to curb actual or perceived retaliation in the workplace. Here are the key takeaways from the 4th Circuit’s ruling in *Israelitt v. Enterprise Services LLC*.

## No Discrimination Claim

The 4th Circuit – which covers Maryland, North Carolina, South Carolina, Virginia, and West Virginia – examined whether an employee with an arthritic big toe faced discrimination and retaliation from his employer after seeking related accommodations. The employee, an IT worker who had previously had surgery for bone spurs on his right big toe, argued he was fired for his conditions in violation of the ADA.

Under the ADA, however, an individual with a disability is defined as a person who has a physical or mental impairment that “substantially limits” one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.

In this case, the employee had no discrimination claim because he was not truly “disabled” under the ADA, according to the 4th Circuit’s [August 16](#) decision. Although the employee had a handicap parking pass and underwent surgeries on his big toe, his last surgery was nearly two decades ago, he regularly exercised by walking for up to 30 to 45 minutes a day, and he did not use any assistive walking devices. Thus, the employee could not prove his symptoms “substantially limited” his ability to walk.

No Comment on a Jury Trial

## **No Guarantee of a Jury Trial**

The court also struck down the employee's ADA retaliation claim and joined the 7th and 9th Circuits by holding that employees with ADA-retaliation claims are not guaranteed a jury trial under the Seventh Amendment or entitled to statutory legal damages (such as monetary compensation).

When examining the IT worker's potential damages, the court noted that the remedies available to him were limited to equitable relief, which includes non-monetary remedies such as reinstatement. While applicable law also provides a statutory cap for compensatory and punitive damages for "certain classes of Title VII and ADA violations," a claim for ADA retaliation is not expressly listed in the statute. Instead, legal damages are limited to ADA failure-to-accommodate claims and discrimination claims.

Under the plain language of the statute, the court concluded, Congress's intent was to exclude legal damages based solely on ADA retaliation. This analysis, coupled with the fact that the ADA does not expressly provide an employee with a right to a jury trial, means the employee was not guaranteed a jury trial on his ADA-retaliation claim under the Seventh Amendment. Thus, the district court properly considered the case without the presence of a jury.

The ruling is good news for employers because a bench trial is often faster and more cost effective than a jury trial. However, you should consider taking the steps below to help avoid retaliation claims altogether.

## **Curbing Workplace Retaliation**

A host of federal, state, and local laws protect employees and applicants from discrimination based on a variety of characteristics, including age, disability, national origin, race, religion, and sex. These laws also prohibit employers from retaliating against workers for bringing such claims.

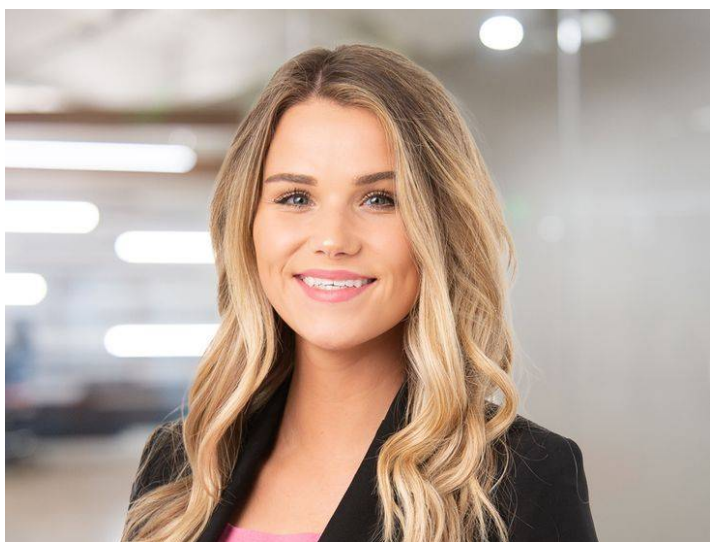
Notably, retaliation claims are the most common type filed with the Equal Employment Opportunity Commission (EEOC) — and as in this case, a retaliation claim can survive even when the underlying discrimination claim fails. Although the trial court in this case held a bench trial instead of a jury trial on the ADA retaliation claim — and the 4th Circuit upheld that decision — such claims can be costly to defend. So, what steps can you take to help curb retaliation and related claims in your workplace? Consider the following actions:

1. Create clear policies explaining that unlawful discrimination and retaliation will not be tolerated.
2. Communicate your policies to all employees and apply them consistently.
3. Let employees know who in the organization to contact if they have a complaint.
4. Train managers and supervisors on what actions may be perceived as discriminatory or retaliatory, how to respond to employee complaints, and who to contact when situations arise.

## **Conclusion**

We will continue to monitor developments in this area and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact the author of this Insight or your Fisher Phillips attorney.

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